

NOT FOR PUBLICATION -- UPLOAD TO WWW.VID.USCOURTS.GOV

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

LAWRENCE HENNEMANN, <i>pro se</i> ,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 1999-097 M/R
)	
E*TRADE GROUP, INC.,)	
)	
Defendant.)	
)	

ATTORNEY:

Kevin A. Rames, Esq.,
St. Croix, U.S.V.I.
For the defendant

MEMORANDUM

MOORE, J.

This matter is before the Court on plaintiff, Lawrence Hennemann's ["Hennemann"] motion for a new trial pursuant to Federal Rule of Civil Procedure 60(b). Because this matter was dismissed before it went to trial, the Court will construe this *pro se* plaintiff's motion as one for relief from the Court's dismissal order.

Hennemann filed suit and requested a jury trial, seeking compensation and other damages he allegedly suffered as a result of E*Trade Group, Inc.'s ["E*Trade"] "reliance on a practice of insufficient analysis of customers' suitability" to trade certain kinds of securities, to wit, stock options. E*Trade moved to

dismiss the complaint and compel arbitration. This Court dismissed the complaint on November 8, 1999 pursuant to an arbitration clause in the account application that Hennemann and E*Trade executed. Nearly a year later, on October 30, 2000, but within the one-year time period allowed under Rule 60(b), Hennemann filed the motion *sub judice*.

Hennemann asserts mistakes on several occasions as a basis for Rule 60(b) relief. (See Mot. New Trial at 2, ¶¶ 8 ("The Court is allowed to grant a new trial if the decision of the Court was affected by mistake"), 9 ("Procedural mistakes, by pro se plaintiffs, are generally excusable by the Court"), and 12 ("In the Complaint, and continuing to the last motion before dismissal, Plaintiff made mistakes that were caused by his mental illness and chronic fatigue")). Mistake can be a basis for relief from a judgment or order. See Fed. R. Civ. P. 60(b)(1) ("On motion . . . the court may relieve a party . . . from a final judgment, order or proceeding for . . . mistake.").

Hennemann asserts that his mistake was providing the Court with only a general evaluation of his mental health, rather than a "standard specific psychological examination and conclusion." (See Mot. at 3, ¶ 2.) Had the Court been privy to such official evidence, he argues, the Court would have voided the arbitration agreement and therefore not have dismissed his complaint.

Hennemann states that his reason for his mistake of not presenting this evidence was "his mental illness and chronic fatigue." (*Id.* at 2, ¶ 12.)¹

The Court is well-aware of plaintiff's history of vexatious litigation.² Although he claims to have been too mentally incapacitated to make decisions to trade stock options and to enter a contract binding him to arbitrate any disputes arising out of his E*Trade account, Hennemann has shown the mental acumen and clarity of thought to institute numerous law suits and to file motions and present legal argument. He has demonstrated the capacity to open more than one brokerage account and the mental agility to select stock options for purchase, a process that requires an investor not only to examine the underlying security, but also to select a strike price and expiration date for each option.

Finding that Hennemann had the capacity, therefore, to enter into an arbitration agreement, the Court dismissed this matter pursuant to 9 U.S.C. § 2, without reviewing the underlying merits. Upon reconsideration, it further appears that

¹ Hennemann also asserts that mental illness caused him to invest in stock options and to execute the agreement to arbitrate.

² Other cases Hennemann has brought include: *Hennemann v. Ameritrade Holding Corp.* (Civ. No. 99-096), *Hennemann v. Government of the Virgin Islands* (Civ. No. 98-182), *Hennemann v. Philip Morris Prods., Inc.* (Civ. No. 94-120), *Hennemann v. Johnson & Johnson Corp.* (Civ. No. 96-066).

plaintiff's claim is frivolous and patently baseless. See *National R.R. Passenger Corp. v. Missouri P. R. Co.*, 501 F.2d 423 (8th Cir. 1974) (court may dismiss action that is frivolous with regard to arbitration agreement). Hennemann's claim that E*Trade is somehow responsible for his trading decisions because it did not adequately analyze his suitability to trade certain securities is frivolous beyond any doubt. Accordingly, Hennemann has failed to support his motion for relief under Rule 60 of the Federal Rules of Civil Procedure, and his motion will be denied.

ENTERED this 1st day of December, 2000.

For the Court

_____/s/_____
Thomas K. Moore
District Judge

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For the defendant

ORDER

MOORE, J.

For the reasons set forth in the foregoing Memorandum, it is
hereby

ORDERED that Hennemann's motion for a new trial is **DENIED**;
it is further

ORDERED that this matter shall be deemed **DISMISSED** without
compelling arbitration.

ENTERED this ____ day of December, 2000.

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For the Court

Thomas K. Moore
District Judge

ATTEST:
ORINN ARNOLD
Clerk of the Court

By: _____
Deputy Clerk

Copies to:
Hon. R.L. Finch
Hon. J.L. Resnick
Kevin A. Rames, Esq.
Lawrence Hennemann, *pro se*
Jeffrey H. Jordan

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